

## REMARKS

Reconsideration of the present application is respectfully requested. Claims 1, 19 and 38 have been amended. Claims 53-55 are new. No new matter has been added.

### Double-Patenting Rejection

Filed herewith is a terminal disclaimer, which Applicants believe overcomes the rejection for obviousness-type double patenting based on U.S. Patent no. 6,311,221 of Raz et al.

### Prior Art Rejection

The present application includes three independent claims, i.e., claims 1, 19 and 38, which stand rejected under 35 U.S.C. § 103(a) based on U.S. Patent no. 5,892,915 of Duso et al. ("Duso") in view of "Official Notice". Applicants respectfully traverse the rejections.

Claim 1, as amended, recites:

1. (Currently amended) A system for streaming a software application to a client comprising:
  - an application library having stored therein a prediction model and application files of the software application, the application files including executable code;
  - a streaming manager configured to send the application files to a client as a plurality of streamlets including executable code, each streamlet corresponding to a particular data block in a respective application file; and
  - a streaming prediction engine configured to identify at least one streamlet which is predicted to be most appropriate to send to a client at a particular time in accordance with the prediction model.

The Examiner admits that Duso fails to disclose a prediction model stored within an application library (Office Action, p. 6). However, the Examiner takes "Official

Notice” that “both the concept and advantages of providing a prediction model stored within the application library is well-known and expected in the art” (Office Action, p.5). Applicants respectfully disagree, as explained below.

First, however, note that the present invention enables the streaming of a software application. A software application, by definition, includes executable code. (Applicants have amended the claims to make this point more clear, although Applicants respectfully submit that this was already sufficiently clear, and the amendment is not necessitated by the rejection.) In contrast, Duso relates to the transmission of video (i.e., data), not executable code. Hence, Duso does not disclose or suggest a streaming manager configured to send application files including executable code to a client as a plurality of streamlets including executable code.

In addition, contrary to the Examiner’s contention, Duso does not disclose or suggest a streaming prediction engine configured to identify at least one streamlet which is predicted to be most appropriate to send to a client at a particular time in accordance with a prediction model. The Examiner cites Duso’s disclosure of pre-fetching video data as meeting this claim feature (Office Action, p. 4). However, the pre-fetching of video data is not the same as, or any suggestion of, predicting streamlets that are most appropriate to send to a client based on a prediction model.

Streamable data files such as audio or video are inherently (and necessarily) organized sequentially, unlike software applications. Pre-fetching, as implemented in video streaming, simply relies on the well-defined sequence of playback to obtain the next required chunk of video data. That is not prediction, and it certainly is not prediction based on a stored prediction model.

Further, the Examiner admits that Duso fails to disclose a prediction model stored within an application library (Office Action, p. 6). However, the Examiner takes “Official Notice” that “both the concept and advantages of providing a prediction model stored within the application library is well-known and expected in the art” (Office Action, p.5). Applicants respectfully submit that the Examiner is mistaken in this regard.

Official Notice, if unsupported by documentary evidence, is only proper if the facts asserted to be well-known are capable of instant and unquestionable demonstration as being well-known. In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). That is clearly not so here. If the Examiner intends to maintain this rejection, the Examiner must provide evidence of the facts of which Official Notice is taken, as required by MPEP § 2144.03.

For each of the above reasons, claim 1 and all claims which depend on it are not obvious based on Duso, or based on any combination of Duso and Official Notice and/or the art of record.

Independent claims 19 and 38 include limitations similar to those discussed above in claim 1 and, therefore, are also patentable along with their dependent claims for similar reasons.

#### New claims 53-55

Dependent claims 53-55 are newly added. Claim 53, which is illustrative of these new claims, provides that the streaming prediction engine identifies the streamlet(s) to send to the client at a particular time based on an order in which code within the plurality of streamlets is predicted to be executed during execution of the software application on the client. Applicants respectfully submit that this functionality is neither

disclosed nor suggested by the art of record. Therefore, claims 53-55 are additionally patentable over the art of record for this reason.

#### Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.


#### Conclusion

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If any additional fee is required, please charge Deposit Account No. 02-2666.

Respectfully submitted,  
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